IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 22676 of 2002

Between:

Central Training Establishment Employee Co-op House Building Society Ltd, Flat No.401, Shirdi sai apartments, Maredpalli, Secunderabad. Rep. By its President G.Lakshman

..... PETITIONER

AND

1 N.Mohan s/o Narasimhan
H.No. 222, West Maredpalli, Secunderabad.
2. Co-operative Tribunal, rep. By its Registrar,

Chandra Vihar Complex, Nampally, Hyderabad.

3. M.Ramesh Babu, S/o Appa rao, Hindu, 50 years,

Occ.Employee, R/o.13, Picket, Secunderabad.

4. N. Buchi Reddy, S/o Ramkrishna reddy

aged about 62 years, Occ.Business,\

R/o0 Sairam Homes, Flat No.201, Kukatpally, Hyderabad.

5. M.Ram Krishna Reddy, S/o Laxmi Reddy,

aged about 48 years, Occ.Business, R/o C-Block,

117, AWHO, Ved Vihar Colony, Secunderabad.

6. S.Ganga Siva Ram Reddy, S/o S. Veera Reddy,

aged about 40 years, Occ.Business, R/o Plot No. 26,

LB Colony, Tirumalgiry, Secunderabad.

.....RESPONDENTs

**Note.1: Respondent No.3 is impleaded as per Court order in WPMP.No. 6015/2003, dt. 13-6-2003.

**Note.2: Respondents 4 to 6 are impleaded as per Court order in WPMP.No. 20756 of 2003 , dt. 27-11-2003.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction one in the nature of Writ of Mandamus (i) declaring the order dated 9-10-2002 in CTA No.15 of 2002 of the cooperative Tribunal, Hyderabad as arbitrary, illegal, without jurisdiction, and the same may be quashed, and (ii) Costs be awarded to the petitioner

Counsel for the Petitioner: Mr.C.V.Nagarjunareddy, Advocate, for Sri B. Mahender Reddi, Advocate

Counsel for Respondent No.1: SriC.B. Rammohan Reddy,

Advocate

Counsel for the Respondent No.2: GP FOR COOPERATION

Counsel for Respondent No. 3: M.Aravind, Advocate

Counsel for Respondents 4 to 6: Sri A.Narasimha Reddy, Advocate

The Court made the following order:

The petitioner, the Central Training Establishment Employees Cooperative Housing Building society Limited, which is registered under the A.P. Cooperative Societies Act, 1964, has filed this Writ Petition, questioning the order of the Cooperative Tribunal, dated 9-10-2002 passed in C.T.A.No. 15 of 2002.

Necessary facts, in brief, which are required for disposal of this Writ Petition, are as follows:

The petitioner-Society, with a view of secure house sites to its members ,and, to develop the same, has entered into an agreement dated 23-07-1988 with the first respondent, to purchase the land admeasuring Ac.2.05 guntas, situated in Sy.Nos. 67 and 69 of Bholakpur village (Picket), Secunderabad, and, further entered into Memorandum of Understanding, to develop the same by

constructing independent houses to its members. Consequent to the said agreement, by availing loans, the above said land was purchased by the petitioner-Society and the first respondent was the consenting party for such transfer of the land in favour of the petitioner-society from its owners. Whereas, it is the case of the petitioner-society, that after transfer of the land, the first respondent did not take any steps to develop the land, for construction of houses, as per the agreed terms. On the other hand, pleading that the petitioner-Society was trying to enter into agreement with third parties to develop the land, the first respondent filed suit in O.S.No. 310 of 1997 on the file of the XI Junior Civil Judge, Secunderabad, seeking specific performance of the agreement dated 23-7-1988. Ultimately, the matter was settled before the Lok Adalat, City Civil Courts, Secunderabad, on 18-12-1998. Though, as per the initial agreement, the first respondent/Contractor/Developer was to construct 35 independent houses, but, as per the terms of the settlement before the Lok Adalat, the petitioner-Society agreed for construction of 35 flats by the first respondent, with built up area of 42,000 square feet in total, and , each flat shall be of 1200 square feet, including common areas. Further, it was agreed, the said construction of flats was to be made in an area of 1200 Sq.Yards, at the exclusive cost of the first respondent, and, further the first respondent agreed to pay Rs.40,00,000/- to the petitioner-Society, to clear-off the loan amount, which was obtained from the Indian Airlines Limited. There was also time stipulation for completion of the construction of flats within thirty six months, with grace period of one year.

Though the settlement arrived before the Lok Adalat is a judicial proceeding, and, is a decree executable in a Court of law, but, however, the petitioner-Society herein, represented by the then Chairman/person-in-charge, has approached the Deputy Registrar of Cooperative Societies (Housing), by raising dispute against the first respondent herein, under Section 61 of the A.P. Cooperative Societies Act, 1964. Primarily, the relief sought for in the said proceedings was, to direct the first respondent herein to construct 35 flats as per the settlement arrived at in O.S.No. 310 of 1997, dated 18-12-1998 and to give possession of the said flats. The Deputy Registrar of Cooperative Societies, before whom the dispute was raised in A.R.C.No.27 of 2001, has

passed an award dated 6-10-2001, holding that the dispute raised by the petitioner therein was not maintainable against the first respondent, under Section 61 of the A.P. Cooperative Societies Act, 1964, and, further, it was held, that the person-in-charge appointed to the society under Section 32 (7) of the A.P. Cooperative Societies Act, 1964, has raised such dispute without taking permission from the competent authority. But, in the same award, certain observations are made by the said authority, purportedly in the larger interest of the members of the Society, advising the petitioner-Society to expedite the matter by approaching the first respondent either for construction of flats or for payment of cost of the flats. Though, no adverse order was passed against the first respondent herein, the first respondent herein, carried the matter in appeal under Section 76 of the A.P. Cooperative Societies Act, 1964, before the Cooperative Tribunal. Before the appellate Tribunal, the petitioner-Society represented by the present President of the Managing Committee, by name, G. Lakshman, has raised objections with regard to maintainability of such appeal, and also dispute raised under Section 61 of the A.P. Cooperative Societies Act, 1964. The appellate Tribunal, in spite of such objections with regard to maintainability of dispute under Section 61 of the A.P. Cooperative Societies Act, 1964, and, also appeal preferred under Section 76 of the A.P. Cooperative Societies Act, 1964 by the first respondent herein, by impugned judgment dated 9-10-2002, allowed the appeal, by holding that the first respondent is entitle to retain the entire land, and, further, direction was issued for payment of Rs,1,34,00,000/- to the petitioner-society. Directions were also issued to the President of the Managing Committee to execute sale deeds for transfer of the land in favour of the third party purchasers.

In this Writ Petition, it is submitted by Sri C.V.Nagarjuna Reddy, the learned Counsel appearing for the petitioner-Society, that the impugned order of the appellate Tribunal is totally without jurisdiction and is beyond the scope of enquiry under Section 61 of the A.P. Cooperative Societies Act, 1964. It is the submission of the learned Counsel that when the matter was settled before the Lok Adalat, and, the decree was passed in terms of the settlement, the appellate Tribunal under the A.P. Cooperative Societies Act, 1964, has no authority or jurisdiction to meddle with the terms of the said settlement. It is

submitted by the learned Counsel that the very dispute raised by the petitioner society was not maintainable, and, the same is outside the scope of enquiry under Section 61 of the Act, and, as such, the primary authority has rightly decided the same, by recording a finding, that such dispute is not maintainable. It is further submitted by the learned Counsel that, in any event, as no adverse orders were passed against the first respondent herein, by the arbitrator, he was not an aggrieved person within the meaning of Section 76 of the A.P. Cooperative Societies Act, 1964, to carry the matter in appeal. It is the case of the learned Counsel, that the impugned order passed by the appellate Tribunal, is beyond the scope of enquiry under Section 61 of the A.P. Cooperative Societies Act, 1964, as much as the appellate Tribunal has virtually modified the terms of the settlement arrived before the Lok Adalat, without any authority and jurisdiction. The learned Counsel has placed reliance, in support of his argument, regarding binding nature of the award passed by the Lok Adalat, in the case of *Board of Trustees of the Port of Visakhapatnam Vs. Presiding Officer, District Legal Services Authority, Visakhapatnam*, and, further, in the case of *L.Satyanarayana Murthy Vs. Land Acquisition Officer.*

On the other hand, it is submitted by Sri C.B. Rammohan Reddy, the learned Counsel appearing for the first respondent, that having regard to the nature of dispute which arose between the petitioner-society and first respondent, it is a business relating to society; as such, the dispute under Section 61 of the A.P. Cooperative Societies Act, 1964 is maintainable. Reference is made to the provisions under Section 61 (c) of the A.P. Cooperative Societies Act, 1964, to support his argument, that such dispute was maintainable before the arbitrator. It is further submitted that the settlement was arrived at before the Lok Adalat for construction of flats to be handed over to the petitioner-society, but, however, sanction was not accorded by the Secunderabad Cantonment Board for construction of such flats, in view of ban imposed; in that view of the matter, the very settlement arrived at is frustrated, and, having regard to the same, the appellate tribunal has considered and allowed the appeal by issuing just and appropriate directions.

Further, it is submitted by the learned Counsel appearing for the third respondent, that the Writ Petition is filed by one G.Lakshman, as president of the Society, but, he has no authority to file such Writ Petition, as much as his membership into the society itself is illegal, and contrary to the Bye-laws of the society.

It is submitted by the learned Counsel appearing for the impleaded respondents 4 to 6, that consequent to the settlement arrived at before the Lok Adalat, the first respondent has entered into agreement with these respondents to take up construction of flats, and, they also made their investment in the project. It is further submitted that though the writ petitioner was not a party to the said agreement, but, they were aware of the same, and, even then, they were not made parties before the arbitrator and appellate Tribunal. It is their case that the dispute raised before the arbitrator under Section 61 of the A.P. Cooperative Societies Act, 1964 is not maintainable, in view of the language envisaged under Section 61 of the A.P. Cooperative Societies Act, 1964.

Heard the learned Counsels at length. Having regard to the above submissions, in this case, it is to be seen, the petitioner-Society, initially entered into agreement with the first respondent, to purchase the said land of Ac.2.05 gunts situated in Sy.Nos. 67 and 69 of Bholakpur village (Picket), Secunderabad, for construction of 35 independent houses as per the specifications mentioned in the agreement. Consequent to the said agreement, loans were arranged to the members of the Society, and, ultimately, by various registered sale deeds, the land to the above extent was transferred in favour of the petitioner-society, for which, the first respondent was also consenting party. It was the case of the petitioner-Society, that after the land was transferred, no further steps were taken by the first respondent as per the agreed terms. But, on the other hand, it was the case of the first respondent that there was breach on the part of the petitioner-society; as such, suit in O.S.No. 310 of 1997, was filed seeking specific performance of the agreement. Ultimately, the matter was referred to the Lok Adalat and settlement was arrived at on 18-12-1998,as per the agreed terms, in O.S.No. 310 of 1997. Though, initially as per the agreement entered into, the first respondent was to construct 35 independent houses, but, as per

the agreed terms, in the settlement before the Lok Adalat, the petitioner-Society agreed for construction of 35 flats with plinth area of 1200 square feet each, within a area of 1200 square yards. It is to be noted, that the said constructions were to be made at free of cost, in lieu of cost of the remaining land, and also, subject to condition of paying Rs.40,00,000/- to the petitioner-Society. The said settlement arrived before the Lok Adalat became final, and, the same is executable in the Court of law as per the provisions of the Legal Services Authorities Act, 1987. But, however, as much as there was no elected body to manage the affairs of the society, the person-in-charge, has filed the application before the Arbitrator by raising dispute under Section 61 of the A.P. Cooperative Societies Act, 1964. The primary authority, though rightly recorded the finding that such application under Section 61 of the A.P. Cooperative Societies Act, 1964 is not maintainable against the first respondent herein, but, however, made certain observations, which were not warranted. In spite of the fact that no adverse order was passed in the award passed by the Arbitrator under Section 62 of the A.P. Cooperative Societies Act, 1964, even then, the first respondent, carried the matter in appeal under Section 76 of the A.P. Cooperative Societies Act, 1964. The appellate Tribunal, in spite of plea of the petitioner herein that such dispute and appeal are not maintainable, has passed the impugned order. With regard to maintainability of the application under Section 61 of the A.P. Cooperative Societies Act, 1964, the appellate authority has recorded the finding, that the settlement arrived at, for construction of 35 flats, is the business of the society; as such, the same is a dispute within the meaning of Section 61 of the A.P. Cooperative Societies Act, 1964. At this point, it is relevant to extract provision under Section 61 of the A.P. Cooperative Societies Act, 1964:

> *"61. Disputes which may be referred to the Registrar:-(1)Not withstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises:- -*
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> a. *among members, past members and persons claiming through members, past members and deceased members; or*

b. *between a member, pats member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent, or employee of the society; or*

c. *between the society or its committee and any past committee any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or*

d. *between the society and any other society,*

such dispute shall be referred to the Registrar for decision."

To maintain a dispute within the meaning of Section 61 of the A.P. Cooperative Societies Act, 1964, it is not sufficient, merely it relates to business of the society. To maintain a dispute under Section 61 of the A.P. Cooperative Societies Act, 1964, the nature of dispute must be between the classified categories as per Section 61 (1) (a) (b) and (c) of the Act. Though it is submitted by Sri C.B. Rammohan Reddy, the learned Counsel appearing for the first respondent that the first respondent can be construed as agent of the petitioner-society to bring within the meaning of Section 61 (1)(c) of the Act, but, the same cannot be accepted. The first respondent cannot be construed as agent of the petitioner-society, in absence of any such authority given to him. The first respondent, is merely a contracting party to the agreement entered with the petitioner-society, to develop the land by constructing houses. On an earlier occasion, the first respondent approached the Civil Court alleging breach, by filing suit for specific performance. In that view of the matter, the very application filed by the petitioner-society is not maintainable. In fact, the primary authority correctly recorded the finding to that effect. In this regard, the reasoning assigned by the appellate tribunal is not a valid reason to bring the dispute within the meaning of Section 61 of the A.P. Cooperative Societies Act, 1964. Though the very society has filed application, but even then, it is the duty of the Tribunals to look into, whether such petition is maintainable or not. In view of the said reasoning, it is a clear case, that the application as such filed by the petitioner was not maintainable and the primary Tribunal correctly recorded the finding to that effect. But, the appellate tribunal, by erroneous

reasoning, reversed the said finding; as such, the same is fit to be set aside.

Further, it is to be seen, in this case, though initially there was an agreement for construction of 35 independent houses, as per the agreed terms, but, when the suit was filed, the same was referred to the Lok Adalat, wherein, settlement was arrived at, and, as per the agreed terms, in the said settlement, the first respondent agreed to construct 35 flats instead of 35 independent houses, subject to other conditions as mentioned there in. In view of the provisions under Section 22(3) of the Legal Services Authorities Act, 1987, every Lok Adalat shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of 1973. In the judgment relied on by the learned Counsel, in the case of *L.Satyanarayana Murthy Vs. Land Acquisition Officer* (2 supra), a learned Single Judge of this Court has held that the proceedings before Lok Adalat are judicial proceedings, and, every Lok Adalat shall be deemed to be a Civil Court and award passed by it is a decree executable in a Court of law. Further, in the case of *Board of Trustees of the Port of Visakhapatnam Vs. Presiding Officer, District Legal Services Authority, Visakhapatnam* (1 supra), learned Single Judge of this Court has held that when a decision is given by the Lok Adalat after notice to all concerned parties, it is binding on them as a decree of Civil Court passed on the basis of compromise, and, no appeal lies against the said decision. In this case, as per the agreed terms before the Lok Adalat, the first respondent agreed to construct 35 flats instead of 35 houses, subject to refunding an amount of Rs.40,00,000/-. When the said settlement became final, it is not open for the authority under Section 76 of the A.P. Cooperative Societies Act, 1964 to meddle with such terms of settlement arrived before the Lok Adalat. The appellate authority, virtually, varied the terms of the settlement arrived before the Lok Adalat. Though it is stated, the agreement dated 23-7-1988 is frustrated by operation of law, in view of the ban imposed by the Secunderabad Cantonment Board for construction of flats, but, however, the same was, not the case of parties. In any event, it is not for the appellate forum under the A.P. Cooperative Societies Act, 1964, to go into the said aspect and to give any direction, contrary to the terms of the settlement arrived before the Lok Adalat. The scope of enquiry, to decide the dispute under Section 61 of the A.P.

Cooperative Societies Act, 1964 is confined to the disputes touching constitution, management or business of the society among the classified categories under Section 61(1) (a) (b) and (c). In that view of the matter also, it is to be held, that the appellate authority exceeded the jurisdiction, conferred under the A.P. Cooperative Societies Act, 1964, in passing the impugned order.

Though it is submitted by the learned Counsel appearing for the third respondent, disputing the very membership of the present president of the Managing Committee, but, it is to be seen, as much as he raised separate dispute, the same cannot be gone into in this Writ Petition, and the same is out side the scope of this Writ Petition.

For the foregoing reasons, the impugned order of the appellate Tribunal cannot be sustained, as the same is passed, by going beyond the scope of enquiry under Section 61 of the A.P. Cooperative Societies Act, 1964 and the jurisdiction conferred on it. In that view of the matter, the Writ Petition is allowed and the impugned order dated 9-10-2002 passed by the Cooperative Tribunal in C.T.A.No. 15 of 2002 is hereby set aside.

The Writ Petition is accordingly allowed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: --04—2005.

Msnr.

Mark LR copies: Yes/No.

That Rule Nisi has been made absolute as above

Witness the Hon'ble Bilal Nazki, the Acting Chief Justice on this the twenty first day ofApril, Two Thousand and five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Registrar, Cooperative Trubunal, Chandra Vihar Complex, Nampally, Hyderabad.

2. Two CCs to Govt.Pleader for Cooperation, High Court of AP, Hyderabad (OUT)

3. Two CD copies

4. Two spare copies